CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 529

LAURA H. JENNINGS, AS EXECUTRIX OF THE LAST WILL AND TESTAMENT OF FREDERIC B. JENNINGS, DECEASED, PETITIONER,

vs.

CHARLES W. ANDERSON, INDIVIDUALLY AND AS UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE THIRD DISTRICT OF NEW YORK

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 27, 1930

CERTIORARI GRANTED NOVEMBER 24, 1930

(35,451)

(35,451)

SUPREME COURT OF THE UNITED STATES

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INDEX

	Original	Print
Proceedings in United States circuit court of appeals, second circuit	1	1
Statement under rule 13	1	1
Record from district court of the United States, Southern New York	2	1
Summons (omitted in printing)	2	
Complaint	4	1
Exhibit "A"—Notice and demand for tax	13	6
"B"—Claim for refund	15	7
"C"—Letter rejecting claims	20	10
Answer	22	11
Order dismissing second separate and distinct cause of action	27	14
Stipulation re dismissal of second cause of action	29	14

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 25, 1930

	Original	Print
Judgment	31	15
Certificate of probable cause	33	16
Bill of exceptions and order settling same	35	17
Caption	35	17
Stipulation of facts	35	18
Defendant's Exhibit "A"—Individual income tax return filed by Frederic B. Jennings	43	23
Defendant's Exhibit "B"—Claim for abatement filed by Laura H. Jennings	44	23
Defendant's Exhibit "C"—Claim for refund, with statement	45	23
Defendant's Exhibit "D"—Letter rejecting claims	46	23
Assignments of error	47	24
Petition for appeal and order allowing same	50	26
Citation (omitted in printing)	52	
Stipulation re record	53	27
Clerk's certificate (omitted in printing)	54	
Opinion per curiam	55	27
Judgment	57	28
Stipulation re opinion in case of Reevs vs. Anderson	58	29
Opinion, Hand, J., case of Reevs vs. Anderson	59	29
Clerk's certificate (omitted in printing)	70	
Order allowing certiorari	71	35

[fol. 1]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

L. 41/214

LAURA H. JENNINGS, as Executrix of the Last Will and Testament of Frederic B. Jennings, Deceased,

against

CHARLES W. ANDERSON, Individually and as United States Collector of Internal Revenue for the Third District of New York

STATEMENT UNDER RULE 13, PAR. 4

This suit was commenced, Dec. 6, 1927.
The names of the original parties remain the same.
Complaint filed, Dec. 31, 1927.
Answer filed, Jany. 27, 1928.
Trial was had, Sept. 10, 1929, before Hon. William I. Grubb, U. S. District Judge and a jury of one.
Verdict directed for plaintiff, Sept. 10, 1929.
Judgment entered, Oct. 11, 1929.
Appeal, on behalf of defendant, taken, Dec. 24, 1929.
Bill of exceptions, filed, Jany. 27. 1930.

[fols. 2 & 3] Summons, in usual form, omitted in printing.

[fol. 4] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

L. 41/214

LAURA H. JENNINGS, as Executrix of the Last Will and Testament of Frederic B. Jennings, Deceased, Plaintiff,

vs.

CHARLES W. ANDERSON, Individually and as United States Collector of Internal Revenue for the Third District of New York, Defendant

COMPLAINT

The complaint of the plaintiff, by her attorneys, Miller & Chevalier, respectfully shows to this Court and alleges:
For a first cause of action:

I. That the plaintiff is and has been at all times since June 17, 1920, the duly appointed and acting executrix of the Last Will and Testament of Frederic B. Jennings, deceased.

II. On information and belief, that the defendant was at the time of the commission of the acts herein complained of, and is now the duly appointed and acting United States Collector of Internal Revenue for the Third District of New York.

[fol. 5] III. This is a suit of civil nature at common law where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of Three Thousand Dollars ($3,000) and arises under the Constitution and Revenue Laws of the United States.

IV. That on or before March 15, 1919, Frederic B. Jennings duly and in good faith filed with the United States Collector of Internal Revenue for the Third Collection District of New York, his income tax return for the calendar year 1918, in accordance with the Revenue Acts of the United States then in effect, and, at the time of filing, paid to the said Collector the sum of $28,727.54, the amount of income tax liability indicated by the said return, which amount was assessed against said Frederic B. Jennings by the Commissioner of Internal Revenue shortly thereafter.

V. That said Frederic B. Jennings died on May 26, 1920.

VI. On information and belief, that on February 8, 1924, the Commissioner of Internal Revenue entered upon one of the assessment lists an alleged assessment against the estate of Frederic B. Jennings, then deceased, for an additional income tax for the said calendar year 1918 in the amount of $31,108.75.

VII. That on September 4, 1924, defendant addressed to the estate of Frederic B. Jennings, a notice and demand for the payment of the said alleged additional tax of [fol. 6] $31,108.75, and interest thereon, under threat of distraint in case the said additional tax and interest should not be paid on or before September 15, 1924.

VIII. That the plaintiff refused to comply with the said demand, on the ground that such additional assessment

and the collection thereof was barred by the provisions of the United States Internal Revenue Laws then in force.

IX. That thereafter, and under date of July 1, 1925, the defendant issued to a Deputy Collector of Internal Revenue for The Third District of New York, a warrant of distraint against the property of said Frederic B. Jennings' estate for the collection of the aforesaid additional taxes and interest, amounting to $35,087.25, by process of levy, by distraint and sale of said property.

X. That on July 8, 1925, defendant addressed to the estate of Frederic B. Jennings, a second notice and demand for the payment of the said alleged additional tax of $31,108.75 and interest thereon, under similar threat of distraint. A true copy of the said notice and demand is attached hereto and marked "Exhibit A."

XI. That on July 22nd, 1925, the plaintiff, under protest and solely because of the duress and threat of distraint by defendant, paid to defendant the said alleged additional tax of $31,108.75, plus interest thereon demanded in the sum of $3,978.50, making a total payment of $35,087.25.

XII. That on September 19, 1925, the plaintiff duly filed with the defendant a claim for refund of the said alleged [fol. 7] additional tax and interest; the Commissioner, by a letter addressed to the plaintiff, dated May 13, 1926, rejected the claim for refund in the principal amount of $31,108.75, stating that the matter of the collection of the interest thereon in the amount of $3,978.50 would be referred to defendant for adjustment; subsequently defendant refunded said interest, with interest thereon, but continues to refuse to refund the said principal amount of $31,108.75 or any part thereof. True copies of the said claim for refund and the said letter are attached hereto and marked respectively "Exhibit B" and "Exhibit C."

XIII. That no proceedings for the collection of said alleged additional assessment against said Frederic B. Jennings or his estate were had or taken within five years from the date of filing the aforesaid return of income taxes for the calendar year 1918, and at the time the said warrant of distraint was issued against the property of said Frederic B. Jennings' estate, more than five years had elapsed since the filing of said Frederic B. Jennings' said return.

XIV. On information and belief, that the aforesaid acts and proceedings of the defendant taken for the collection of the said alleged additional assessment were wrongful and unlawful and in violation of the plaintiff's rights, and that the said alleged additional tax was wrongfully and illegally collected from plaintiff.

Wherefore the plaintiff demands judgment against the defendant in the sum of $31,108.75, with interest thereon from July 22, 1925.

[fol. 8] For a second separate and distinct cause of action, plaintiff alleges:

XV. Plaintiff repeats and realleges all the allegations stated in paragraphs I, II, and III hereof.

XVI. That on or before March 15, 1920, said Frederic B. Jennings duly and in good faith filed with the defendant his income tax return for the calendar year 1919, in accordance with the Revenue Acts of the United States then in effect, and, at the time of filing, paid to the defendant the sum of $31,819.66, the amount of income tax liability indicated by the said return, which amount was assessed against said Frederic B. Jennings by the Commissioner of Internal Revenue shortly thereafter.

XVII. That said Frederic B. Jennings died on May 26th, 1920.

XVIII. That on May 17, 1924, the Commissioner of Internal Revenue entered upon one of the assessment lists an alleged assessment against said Frederic B. Jennings, personally, who was then deceased, for an additional income tax for the said calendar year 1919 in the amount of $46,287.04.

XIX. That on May 27, 1924, a notice and demand for the payment of the said alleged additional tax in the amount of $46,287.04, and interest thereon in the amount of $6,184.70, was addressed to said Frederic B. Jennings, who was then deceased, under threat of distraint in case the said additional tax and interest should not be paid on or before June 7, 1924.

[fol. 9] XX. That the plaintiff refused to comply with the said demand on the ground that, no such additional assessment was ever made against said Frederic B. Jennings in his lifetime nor against his estate after his death, and that such additional assessment and the collection thereof were barred by the provisions of the United States Internal Revenue Laws then in force.

XXI. That thereafter, and under date of July 1, 1925, the defendant issued to a Deputy Collector of Internal Revenue for the Third District of New York, a warrant of distraint against the property of said Frederic B. Jennings' Estate for the collection of the aforesaid additional taxes and interest, amounting to $52,471.74, by process of levy, by disstraint and sale of plaintiff's property.

XXII. That on July 8, 1925, defendant addressed to Frederic B. Jennings, who was then deceased, a second notice and demand for the payment of the said alleged additional tax and interest thereon, under similar threat of distraint. A true copy of the said notice and demand is attached hereto and marked "Exhibit D."

XXIII. That on July 22, 1925, the plaintiff, under protest and solely because of the duress and threat of distraint by the Commissioner, paid the said alleged additional tax of $46,287.04, plus interest thereon demanded in the sum of $6,184.70, making a total payment of $52,-471.74.

XXIV. That on September 19, 1925, the plaintiff duly filed with the defendant a claim for refund of the said alleged additional tax and interest; the Commissioner, by [fol. 10] a letter addressed to the plaintiff, dated May 13, 1926, rejected the claim for refund in the principal amount of $46,287.04, stating that the matter of the collection of the interest thereon in the amount of $6,184.70 would be referred to the defendant for adjustment; subsequently defendant refunded the said interest with interest thereon, but continues to refuse to refund the said principal amount of $46,287.04 or any part thereof. True copies of the said claim for refund and of the said letter are attached hereto and marked respectively "Exhibit E" and "Exhibit F."

XXV. That no such additional assessment was made against said Frederic B. Jennings in his lifetime nor against his estate after his death.

XXVI. That no proceedings for the collection of said alleged additional assessment against said Frederic B. Jennings or his estate were had or taken within five years from the date of filing said Frederic B. Jennings' aforesaid return of income taxes for the calendar year 1919, and at the time the said warrant of distraint was issued against the property of said Frederic B. Jennings' estate, more than five years had elapsed since the filing of said Frederic B. Jennings' said return.

XXVII. On information and belief, that the aforesaid acts and proceedings of the defendant taken for the collection of the said alleged additional assessment were wrongful and unlawful and in violation of the plaintiff's rights, and that the said alleged additional tax was wrongfully and illegally collected from plaintiff.

[fol. 11] Wherefore the plaintiff demands judgment against the defendant in the sum of $46,287.04, with interest thereon from July 22, 1925.

Miller & Chevalier, Attorneys for Plaintiff. Office and P. O. address: 111 Broadway, Borough of Manhattan, New York City.

[fol. 12] *Duly sworn to by Ewing Everett. Jurat omitted in printing.*

[fol. 13] EXHIBIT "A" TO COMPLAINT

Form 1-21a—Revised Jan. 1920

Income, War-profits, and Excess-profits Tax

Second Notice and Demand for Tax

United States Internal Revenue Service

Addl. 1918.
Comm. list Feb., 1924.
Spl. 2 #33.

Tax	$31,108.75
Int. at 6% from 2-15-24 to 8-14-24	933.26
9-4-24 to 7-8-25 @ 1%	3,045.24
	$35,087.25

Demand is hereby made for the payment of the taxes stated on this notice with a penalty of 5 per cent which has been incurred by failure to pay such taxes within the prescribed time. Beginning on the due date stated below, interest will also accrue at the rate of 1 per cent per month until paid. If payment of the tax, penalty, and interest is not received within ten days, the Act provides that collection with costs shall be made, by seizure and sale of property.

Due date 2-15-24.

Charles W. Anderson, Collector.

[fol. 14] To avoid seizure and sale of property this tax must be paid to Collector of Internal Revenue at 250 W. 57th St., N. Y., not later than 7-18-25.

Estate of Frederic B. Jennings c/o New York Trust Company, 100 Broadway, New York.

[fol. 15] Form 843—Jan., 1922

EXHIBIT "B" TO COMPLAINT

Treasury Department, Internal Revenue Service. Comptroller General U. S., January 18, 1922.

Claim for Refund of Taxes Illegally Collected

Important

File with Collector of Internal Revenue where assessment was made. Not acceptable unless completely filled in.

Collector of Internal Rev., Third District, New York. Received Sep. 19, 1925. No remittance.

STATE OF NEW YORK,
County of New York, ss:

Estate of Frederic B. Jennings, c/o the New York Trust Company, 100 Broadway, New York, N. Y.

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the

taxpayer named, and that the facts given below with reference to said statement are true and complete:

[fol. 16]

Period	Year
From Jan. 1	1918
To Dec. 31	1918

1. Business in which engaged: Decedent's Estate.

2. Character of assessment or tax (State for or upon what the tax was assessed or the stamps affixed): Income Tax and Interest.

3. Amount of alleged assessment: $35,087.25.

4. Reduction of Tax Liability requested (Income and Profits Tax): 35,087.25.

6. Amount to be refunded (or such greater amount as is legally refundable): 35,087.25*.

7. Dates of payment (see Collector's receipts or indorsements of canceled checks): July 22, 1925.

8. District in which return (if any) was filed: 3rd District of New York.

Deponent verily believes that this application should be allowed for the following reasons:

1. The collection of the above sum was barred by the statute of limitations and was illegally effected by threat of duress by the Collector of Internal Revenue for the 3rd Collection District of New York.

2. Interest was illegally collected upon the principal of the alleged additional income tax.

[fol. 17] 3. See statement attached for further details.

(Please address all correspondence c/o Miller & Chevalier, Southern Building, Washington, D. C.)

(Signed): S. B. Silleck, **Attorney in Fact for Laura H. Jennings in Her Capacity as Executrix of Estate of Frederic B. Jennings.

---

*Plus interest legally allowable.

**See copy of power of attorney attached hereto.

Sworn to and subscribed before me this 16 day of Sept., 1925. M. D. Thompson, Notary Public, N. Y. Co., No. 511. Reg. No. 7024.

(This affidavit may be sworn to before a Deputy Collector of Internal Revenue or Revenue Agent without charge.)

Estate of Frederic B. Jennings

Statement of Facts and Basis of Claim for Refund—1918

On July 22, 1925 the executrix of the Estate of Frederic B. Jennings paid under protest and threat of duress the sum of $35,087.25 to the Collector of Internal Revenue of the Third District of New York on account of additional [fol. 18] income taxes and interest thereon alleged to be due from the Estate of Frederic B. Jennings because of an alleged increased tax liability alleged to have been incurred during the lifetime of said Frederic B. Jennings.

The notice and demand received from the office of Collector Charles W. Anderson set forth the sum demanded as follows:

Tax	$31,108.75
Int. at 6% from 2-15-24 to 8-14-24	933.26
9-4-24 to 7-8-25 at 1%	3,045.24
	$35,087.25

It is respectfully submitted that the collection of the $35,087.25 as aforesaid was illegal, and a refund of said sum, together with such interest thereon as may be lawfully allowed, is requested.

The following are among the grounds for the claim with respect to the principal sum of $31,108.75:

1. The collection of the additional tax was barred by the statute of limitations, being specifically prohibited by Section 250(d) of the Revenue Act of 1918.

2. In 1918 Mr. Jennings was charged with $4,462.10 as interest by the brokerage house of H. P. Goldschmidt & Co., New York City, and credited by the same firm with the sum of $771.98 on account of interest accrued. This left a net charge of $3,690.12, which was not taken as a deduction

on the original return and which the Revenue Agent failed to allow. This item should be deducted from net income.

[fol. 19] The following are among the grounds for the claim with respect to interest:

1. The collection of the interest was barred by the statute of limitations, being specifically prohibited by Section 250-(d) of the Revenue Act of 1918.

2. There is no provision for interest on additional taxes claimed under the Revenue Act of 1918 until after assessment has been made.

3. Estates of deceased persons are specifically exempted from the interest provisions of the law by Section 250(e) of the Revenue Act of 1918.

Prior to any final determination with respect to this claim for refund an oral hearing is requested, and since it is highly desirable to have the affairs of the Estate settled as soon as possible, it would be greatly appreciated if the time for the conference could be fixed at as early a date as possible.

Respectfully, —— ——, Attorney in Fact for Laura H. Jennings in Her Capacity as Executrix of Estate of Frederic B. Jennings.

[fol. 20] EXHIBIT "C" TO COMPLAINT

IT:PA:PYA. ARM.

May 13, 1926.

Estate of Frederic B. Jennings, c/o New York Trust Company, 100 Broadway, New York, New York.

SIRS: Your claims for the refund of $35,087.25 and $52,-471.74, individual income taxes and interest for the years 1918 and 1919, respectively, have been examined.

The basis of your claims is the statement that the collection of the above sums was barred by the statute of limitations; that the 1919 assessment was illegal; and that interest was illegally collected upon the principal. It is also stated in the 1918 claim that the deduction against gross income for interest paid should be increased.

At the conference held in this office April 20, 1926, it was contended that inasmuch as deficiencies in tax were assessed against a taxpayer who is no longer in existence, the taxpayer having died, the collection of the taxes was barred by Section 250(d) of the Revenue Act of 1918.

It is disclosed that the deficiencies of $31,108.75 for 1918 and $46,287.04 for 1919 were assessed within the five-year period prescribed by law, and having been assessed within that period, they could then be collected within six years from the date of the assessments, in accordance with the provisions of Article 1272 of Regulations 65.

[fol. 21] The amount of the taxable net income for the year 1918 was determined by an investigation of the taxpayer's books of account and records, the results of which were set forth in the report of the Supervising Internal Revenue Agent at New York, New York, submitted to this office under date of December 18, 1923. The total deduction of $35,122.57, claimed in the return for interest paid, was allowed. No evidence has been submitted in substantiation of the claim that an additional amount of $3,690.12 should be allowed, and accordingly no change has been made in that item.

Your claims in regard to the above items will, therefore, be rejected by this office.

You are advised that the matter of the collection of interest, which was added to the amount of the deficiencies at the rate of 1% per month, will be referred to the Collector of Internal Revenue for your district for adjustment.

The rejection of your claims will officially appear on the next schedule to be approved by the Commissioner.

Respectfully, C. R. Nash, Assistant to the Commissioner, by —— ——, Head of Division.

ep-2.

[fol. 22] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER

The defendant, answering the complaint of the plaintiff herein, alleges as follows:

First. Denies that he has any knowledge or information sufficient to form a belief as to any of the allegations con-

tained in Paragraphs "I", "IV" and "V" of the plaintiff's complaint.

Second. Denies that he has any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "VI" of the plaintiff's complaint, except that he admits that an asses-ment was duly made against this plaintiff for an additional tax of $31,108.75.

Third. Denies that he has any knowledge or information sufficient to form a belief as to each and every allegation [fol. 23] contained in paragraph "VII" of the plaintiff's complaint, except that he admits that a notice and demand for the payment of $31,108.75 was duly made upon this plaintiff.

Fourth. Denies that he has any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs "VIII" and "IX", except that he admits that a warrant of distrain against the property of this plaintiff for the collection of the said tax and interest was duly issued to a Deputy Collector of Internal Revenue.

Fifth. Denies that he has any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "X", except that he admits that a second notice and demand for the payment of the said tax was duly made upon this plaintiff.

Sixth. Upon information and belief denies that the claim for refund was duly filed as is stated in paragraph "XII" of the plaintiff's complaint.

Seventh. On information and belief denies each and every allegation contained in paragraph "XIII" of the plaintiff's complaint.

Eighth. Denies each and every allegation contained in paragraph "XIV" of the plaintiff's complaint.

[fol. 24] As to a second alleged cause of action stated in the complaint the defendant answers the same as follows:

Ninth. Denies that he has any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs "XVI" and "XVII" of the plaintiff's complaint.

Tenth. Denies that he has any knowledge or information sufficient to form a belief as to each and every allega-

tion contained in paragraph "XVIII" of the plaintiff's complaint, except that he admits that an assessment was duly made against this plaintiff for an additional tax in the amount of $46,287.04.

Eleventh. Denies that he has any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "XIX" of the plaintiff's complaint, except that he admits that notice and demand for the payment of additional tax was made upon this plaintiff.

Twelfth. Denies that he has any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs "XX" and "XXI" of the plaintiff's complaint, except that he admits that a warrant of distraint duly issued against property of this plaintiff for additional taxes and interest amounting to $52,471.74.

Thirteenth. Denies that he has any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "XXII" of the plaintiff's [fol. 25] complaint, except that he admits that a second notice and demand for payment of said tax was duly made upon this plaintiff.

Fourteenth. Upon information and belief denies that the claim for refund was duly filed as is stated in paragraph "XXIV" of the plaintiff's complaint.

Fifteenth. Upon information and belief denies each and every allegation contained in paragraph "XXV" and "XXVI" of the plaintiff's complaint.

Sixteenth. Upon information and belief denies each and every allegation contained in paragraph "XXVII" of the plaintiff's complaint.

Wherefore defendant demands judgment and that the complaint herein be dismissed with costs.

Charles H. Tuttle, United States Attorney for the Southern District of New York, Attorney for the Defendant. Office and P. O. Address: U. S. Courts & P. O. Bldg., Borough of Manhattan, City of New York.

[fol. 26] *Duly sworn to by Leon E. Spencer. Jurat omitted in printing.*

[fol. 27] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DISMISSING SECOND SEPARATE AND DISTINCT CAUSE OF ACTION—July 9, 1929

Upon reading and filing the annexed stipulation, wherein the attorneys for the plaintiff and the defendant in this action stipulate that the second cause of action purported to have been set forth in the complaint herein is governed by the case of Russell, et al. v. United States, decided by the Supreme Court of the United States on January 2, 1929, and that a certificate of over-assessment in the sum of $46,287.04 has been issued to the taxpayer herein, it is

[fol. 28] Ordered that the complaint in the above entitled suit in so far as it purports to set forth a second, separate and distinct cause of action be and the same hereby is dismissed without cost to either party.

Dated New York, N. Y., July 9th, 1929.

T. D. Thacher, United States District Judge.

[fol. 29] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE DISMISSAL OF SECOND CAUSE OF ACTION

It is hereby stipulated and agreed by and between the attorneys for Laura H. Jennings, as Executrix of the Last Will and Testament of Frederic B. Jennings, deceased, the plaintiff herein, and Charles W. Anderson, individually and as United States Collector of Internal Revenue for the Third District of New York, the defendant herein, that the second cause of action purported to have been set forth in the complaint is governed by the case of Russell, et al. v. United States, decided by the Supreme Court of the United States on January 2, 1929, and that inasmuch as a certificate of over-assessment in the sum of $46,287.04 has been issued in favor of the plaintiff in this action the complaint in the above entitled action in so far as the second, separate and distinct cause of action purported to be set forth therein is

[fol. 30] concerned shall be dismissed without cost to either party and that an order may be entered to that effect by either party without notice to the other.

Dated New York, N. Y., May 12, 1929.

Miller & Chevalier, Attorneys for Plaintiff. Charles H. Tuttle, U. S. Attorney, Attorney for Defendant.

Sir: You will please take notice that an Order, of which the within is a copy, was this day duly entered in the within-entitled action, in the office of the Clerk of the U. S. Dist. Ct., So. Dist. of N. Y.

Dated N. Y., July 9th, 1929.

Yours, etc., Charles H. Tuttle, U. S. Attorney, Attorney for Deft.

[fol. 31] In United States District Court for the Southern District of New York

L. 41/214

Laura H. Jennings, as Executrix of the Last Will and Testament of Frederic B. Jennings, Deceased, Plaintiff,

vs.

Charles W. Anderson, Individually and as United States Collector of Internal Revenue for the Third District of New York, Defendant

Judgment

The issues of this action having been duly brought on for trial and tried before the Honorable William I. Grubb, District Judge, and attorneys for the plaintiff and attorney for the defendant having stipulated that the case might be tried with a jury of one, and at the close of the case each side would move for a direction of a verdict, and a jury of one having been duly impaneled and sworn, and the cause having proceeded to trial, and on September 11, 1929, at the close of the entire case each side having moved for a direction of a verdict, and the decision of the Court having been reserved, and thereafter, on September 27, 1929, the Court having directed a verdict for the plaintiff in the full amount

demanded in the complaint, and defendant's attorney hav-
[fol. 32] ing moved to set aside the verdict, and said motion having been denied by the Court, and the plaintiff's costs having been taxed at the sum of $30.25.

Now it is adjudged that the plaintiff, Laura H. Jennings, as Executrix of the Last Will and Testament of Frederic B. Jennings, deceased, recover of the defendant, Charles W. Anderson, individually and as United States Collector of Internal Revenue for the Third District of New York, the sum of $31,108.75, together with interest thereon to be computed at the rate of 6 per cent per annum from the 30th day of July, 1925, to a date preceding the date of the refund check by not more than 30 days, such date to be determined by the Commissioner of Internal Revenue in accordance with the provisions of Section 177 of the Judicial Code as amended by Section 615 of the Revenue Act of 1928, together with the costs of this action, said costs amounting to $30.25.

Judgment signed this 11th day of October, 1929.

Alex. Gilchrist, Jr., Clerk of U. S. District Court.

[fol. 33] IN UNITED STATES DISTRICT COURT

[Title omitted]

CERTIFICATE OF PROBABLE CAUSE--Filed Oct. 29, 1929

The plaintiff having commenced this action by personal service of the summons and complaint upon the defendant and defendant having appeared herein by the United States Attorney for the Southern District of New York, his attorney, and judgment having been entered herein on the 11th day of October, 1929, in favor of Laura H. Jennings, as Executrix of the Last Will and Testament of Frederic B. Jennings, deceased, and against the defendant Charles W. Anderson, individually and as United States Collector of Internal Revenue in the sum of $31,108.75, together with interest thereon to be computed at the rate of 6 per cent per annum from the 30th day of July, 1925 to the date preceding the date of the refund check by not more than 30 days, such date to be determined by the Commissioner of
[fol. 34] Internal Revenue in accordance with the provi-

DELIVER OR SEND THIS RETURN TO COLLECTOR OF INTERNAL REVENUE ON OR BEFORE MARCH 15, 1919.

DETACH AND KEEP WORK SHEET AND INSTRUCTION SHEET

T.M.R.

MAR 19 1923

Page 1 of Return

314156

Form 1040—UNITED STATES INTERNAL REVENUE SERVICE

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES OF MORE THAN $5,000

FOR CALENDAR YEAR 1918

43911

(1)

(DO NOT WRITE IN THIS SPACE)

Examined by

Audited by

FIRST PAYMENT

$

Cashier's Stamp

CASH

CHECK ✓

M. O.

CERT. of DEP.

If the return is made for a part of the calendar year 1918, the time on which the period covered by the return is based must be plainly stated at the head of the return.

PRINT NAME AND ADDRESS PLAINLY BELOW

Frederic B. Jennings

86 Park Avenue

(Street and number or rural route)

New York City New York

(Post office and State)

1. Did you make a return for 1917? Yes 2. If so, what address did you give on that return? Same

3. To what Collector's office was it sent? (Give district or city and State.) Same

4. Give number, if any, assigned to you for 1917, if it does not appear in address at head of return.

5. Were you in 1918 married and living with wife (or husband)? Yes 6. If not, were you head of a family as defined in instructions under "Personal Exemption"?

7. How many dependent persons under 18 years of age, principally dependent upon you for support, are included in your family (exclusive) for whom you received credit in 1917 return? None

8. If you claim any additional exemption on account of dependent persons other than your children, what was their relationship to you? A U N T (Aunt)

9. Write "R" if this return is for a married person living with husband or wife; write "S" if it is for a single person or for a married person not living with husband or wife.

10. Did your wife (or husband) or minor child make a separate return? Yes (If so, give name and address entered at head of this return.) Laura H. Jennings 86 Park Avenue New York City

11. Enter below all unearned income received by (or accrued to) you during the year.

Class of Securities.	Principal.	Income.	Class of Securities.	Principal.	Income.
Bonds of State, etc., not exempt from tax			Interest on bonds, notes, and other interest-bearing obligations of individuals, associations, and corporations (except interest on bonds of the Fourth Liberty Loan)	350872.25	31087.50
Bonds of States, municipalities, etc., exempt from tax			Interest on bonds of the Fourth Liberty Loan		
Bonds of the United States issued prior to September 1, 1917			Dividends on stock of corporations		

12. State amount of stock dividends received by you on [illegible] has directly during the [illegible] ...

(a) Accumulated in 1917, $ ... (b) Accumulated in 1918, $ ... (c) Accumulated since February ... 1913, and ...

13. Enter in table below interest on Liberty Bonds and other obligations of the United States issued since September 1, 1917, received ... maximum amount of such obligations (par value) held at any one time from which such interest was derived ...

	Amount of Interest.	Maximum Amount of Obligations.	Amount of Interest.	Maximum Amount of Obligations.		
(a) First Liberty Loan converted into First Loan and Second Liberty Loan converted into Second Loan issued since January 1, 1919						
(b) First and Second Liberty Loans converted into Third Loan and Third Liberty Loan	5129.71	Same				
(c) First Liberty Loan converted into Fourth Loan						
(d) Third Liberty Loan		10000				
(e) Bonds of obligations issued since September 1, 1917						
Total	5129.71	290000				

INITIALS:

DATE:

AUDITED

14. Amount of earned income (maximum $30,000) limited to one and one-half times the amount of bonds of the Fourth Liberty Loan ... State here amount of bonds of the Fourth Liberty Loan originally subscribed for and still held ...

15. Enter in the table below income from partnerships, personal service corporations, and estates and trusts ...

Name of Partnership, Personal Service Corporation, or Trust.	Business carried on.	Amount received during year.	Capital Invested.	Net Income.	Interest on Liberty Bonds.	Interest on other Tax-Exempt Securities.	Other Income.
ABDUCED							
AIM REBOT- TO NOR		31105.75					
LATH CONTROL		582.14					
[illegible] ACTORIES		6					
[illegible] CO.		2.25					
(a) Totals as shown on Schedule A, page 2, under C)							
(b) Total as shown on 1917 return (see instructions, page 2, under C)							

(c) Amount of stock dividends (exclusive of dividends in 1918 rates (enter as 2) ... (d) Amount of stock dividends payable ... 1919 ...

Total Net Income Subject to Surtax.		Total Net Income Subject to Normal Tax.		Calculation of Tax.	
16. Item 1, page 2	102895.61	AT 1918 RATES.		33. Normal tax on first $4,000 of income	2000.00
17. Item 10 (a)	0	25. Net income shown on page 2, Item 1	9895.61	34. Normal tax on $ ...	00.35
18. Item 14 (b), column 2	0	26. Less personal exemption	2000.00	35. Normal tax on $ ...	0
19. Total (Items 16, 17, and 18)	102895.61	27. Balance	7895.61	36. Surtax on $ ... (from table in page 3 of instructions)	2810.19
20. Item 10 (b)	0	28. Amount subject to tax at 6% (not over $4,000)	4000.00	37. Surtax on $ ... (from table on page 3 of instructions)	0
21. Item 14 (c)	0	29. Balance subject to tax at 12%	3895.61	38. Total tax	2810.54
22. Total (Items 19, 20, and 21)	102895.61	AT 1917 RATES.		39. Credit for 25% of amount paid on account of taxes on profits, and on account of taxes on income from sources outside of the United States	700.00
23. Item 15 (a)	0	30. Amount of Item 11 (b), column 2		40. Income, war profits, and excess profits taxes paid to foreign countries and possessions of the United States	0
24. Item 14 (d)	0	31. Balance of personal exemption not used above (Item 27 less Item 28)		41. Balance of tax (Item 38 minus Items 39 and 40)	2810.54
25. Total net income (Items 21, 23, and 24)	102895.61	32. Balance subject to tax at 2%		42. Amount of tax paid at time of filing return	7181.87

I swear (or affirm) that this return, including the accompanying schedules and statements, has been examined by me, and to the best of my knowledge and belief, is a true and complete return in good faith, pursuant to the Revenue Act of 1918, and that all the gross income and income received by or accrued to me (or the person for whom this return is made) during the year 1918, and that all deductions and credits herein are allowable by law.

Sworn to and subscribed before me this 15th day of March 1919

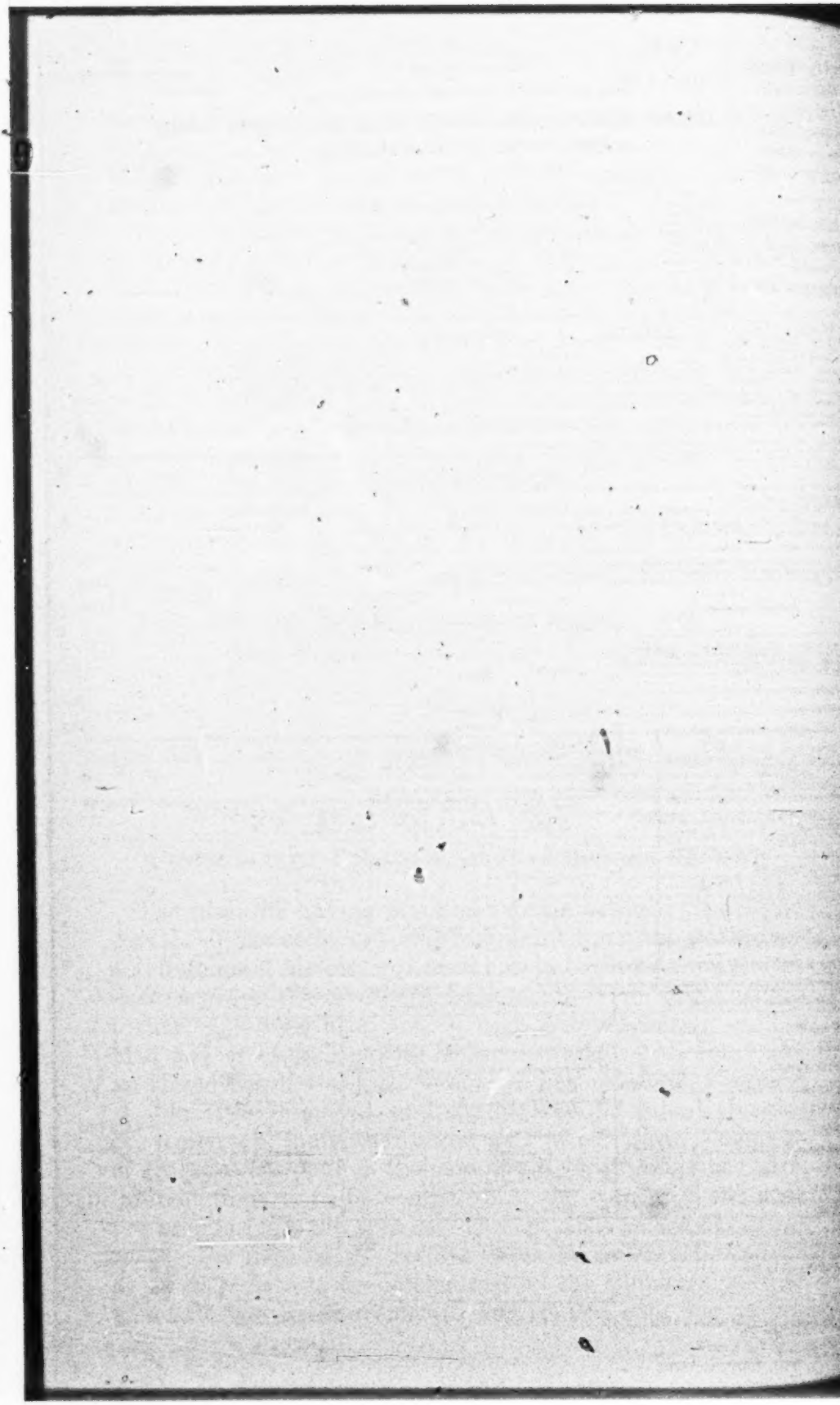
H. H. Bruder

(Signature of officer administering oath)

Frederic B. Jennings

86 Park Avenue New York

43-a



Page 3 of Return

RETURN OF INCOME TAXABLE AT 1918 RATES

A. INCOME FROM BUSINESS OR PROFESSION.

1. Kind of business ____ 2. Business address ____

3. Total sales and income from business or professional services ____

COST OF GOODS SOLD:

4. Labor ____
5. Material and supplies ____
6. Merchandise bought for sale ____
7. Other costs (submit schedule of principal items at foot of page or on separate sheet) ____
8. Total inventories at beginning of year ____
9. Total ____
10. Less inventories at end of year ____
11. Net Cost of Goods Sold ____

OTHER BUSINESS DEDUCTIONS:

12. Salaries and wages not reported as "Labor" under "Cost of Goods Sold" ____
13. Rent ____
14. Interest on business indebtedness ____
15. Taxes on business and business property ____
16. Repairs, wear and tear, obsolescence, depletion, etc.* property loses (explain in table below) ____
17. Bad debts arising from sales ____
18. Other expenses (submit schedule of principal items at foot of page or on separate sheet) ____
19. Total Other Business Deductions ____

20. Net Cost of Goods Sold Plus Other Business Deductions ____

21. Net Income from Business or Profession ____

B. INCOME FROM SALARIES, WAGES, COMMISSIONS, BONUSES, DIRECTOR'S FEES, AND PENSIONS.

1. Occupation.	2. Name and Address of Employer.	3. Gross Income.	4. Deductions, if any.	
Lawyer	Professional income 15 Broad St. Norfolk Va	$ 6478.00	$ 1827.00	
	Director Fees	288.00		
Net Income from Salaries, etc. (total of columns 3 minus total of column 4)		$ 6766.00	$ 1827.00	$ 5141

C. INCOME FROM PARTNERSHIPS, PERSONAL SERVICE CORPORATIONS, AND ESTATES AND TRUSTS not including interest on tax-free covenant bonds received through fiduciaries, which should be included in Item F; dividends, which should be included in Item G; and income exempt from taxation, which should be included in Item E(2), of income taxable at 1917 or 1918 rates—see taxable 16, page 2) ____

D. PROFIT FROM SALE OF LAND, BUILDINGS, STOCKS, BONDS, AND OTHER PROPERTY.

1. Date of Acquisition.	2. Year Acquired.	3. Name and Address of Purchaser or Broker.	4. Sale Price.	5. Original Cost or Market Value, March 1, 1913.	6. Cost or Basis (Cost Plus Improvements, if any)	7. Depreciation Subsequent to Acquisition.	
Net Profit from Sales (total of columns 4 and 7 minus total of columns 5 and 6)							

E. INCOME FROM RENTS AND ROYALTIES.

	1. Gross Income.	2. Deductions.	3. Net Income.	4. Interest Included in Net Income.
Net Income from Rents and Royalties (total of column 3 minus total of columns 1, 2, 6, and 7)	$ 2485.21	$ 262.21	$ 2223.00	$ 2223.31

F. INTEREST ON CORPORATION BONDS CONTAINING TAX-FREE COVENANT, ON WHICH A TAX OF 2% WAS PAID BY DEBTOR CORPORATION

(including that interest received through fiduciaries) ____ $ 400.00

G. OTHER INCOME (not including dividends, or interest on obligations of the United States).

	1. Gross Income.	2. Deductions, if any.
1. Interest on bonds, mortgages, and other obligations of domestic and resident corporations except as reported in Item F	$ 7430.00	
2. Interest on bonds of foreign countries and corporations and dividends on stock of foreign corporations		
3. Interest on bank deposits, mortgages, etc.		
4.		
5.		
Net Income (total of column 1 minus total of column 2)	$ 7430.00	$ 7430.00

H. TOTAL NET INCOME FROM ABOVE SOURCES ____ $ 65970.00

I. GENERAL DEDUCTIONS NOT INCLUDED ABOVE.

1. Interest paid or accrued	$ 3513.57	3. Losses by fire, storm, etc. (explain in table below)		5. Other deductions, if any (explain below)	
Taxes paid or accrued	896.40	4. Contributions (explain below)	1920.05	Total	$ 5330.02

1. Total net income on which normal tax is to be calculated at 1918 rates (H minus I) (enter as 25, page 2) ____ $ 9816.61

2(a). Dividends on stock of corporations organized or doing business in the United States (not including income from personal service corporations).

Received directly: $ 9816.61 received through partnerships, personal service corporations, and fiduciaries $ ____ Total ____ $ 9816.61

2(b). Taxable interest on bonds and other obligations of the United States issued after September 1, 1917 (see instructions, page 2) ____ 312.71

3. Total net income subject to surtax at 1918 rates (if the amount is $5,000 or less, make your return on Form 1040A, unless you had income taxable at 1917 or 1918 rates) ____ $ 10129.32

DATES IN THIS TABLE DETAILS CONCERNING REPAIRS, WEAR AND TEAR, PROPERTY LOSSES, ETC., CLAIMED AS DEDUCTIONS IN SCHEDULES A, E, AND I ABOVE.

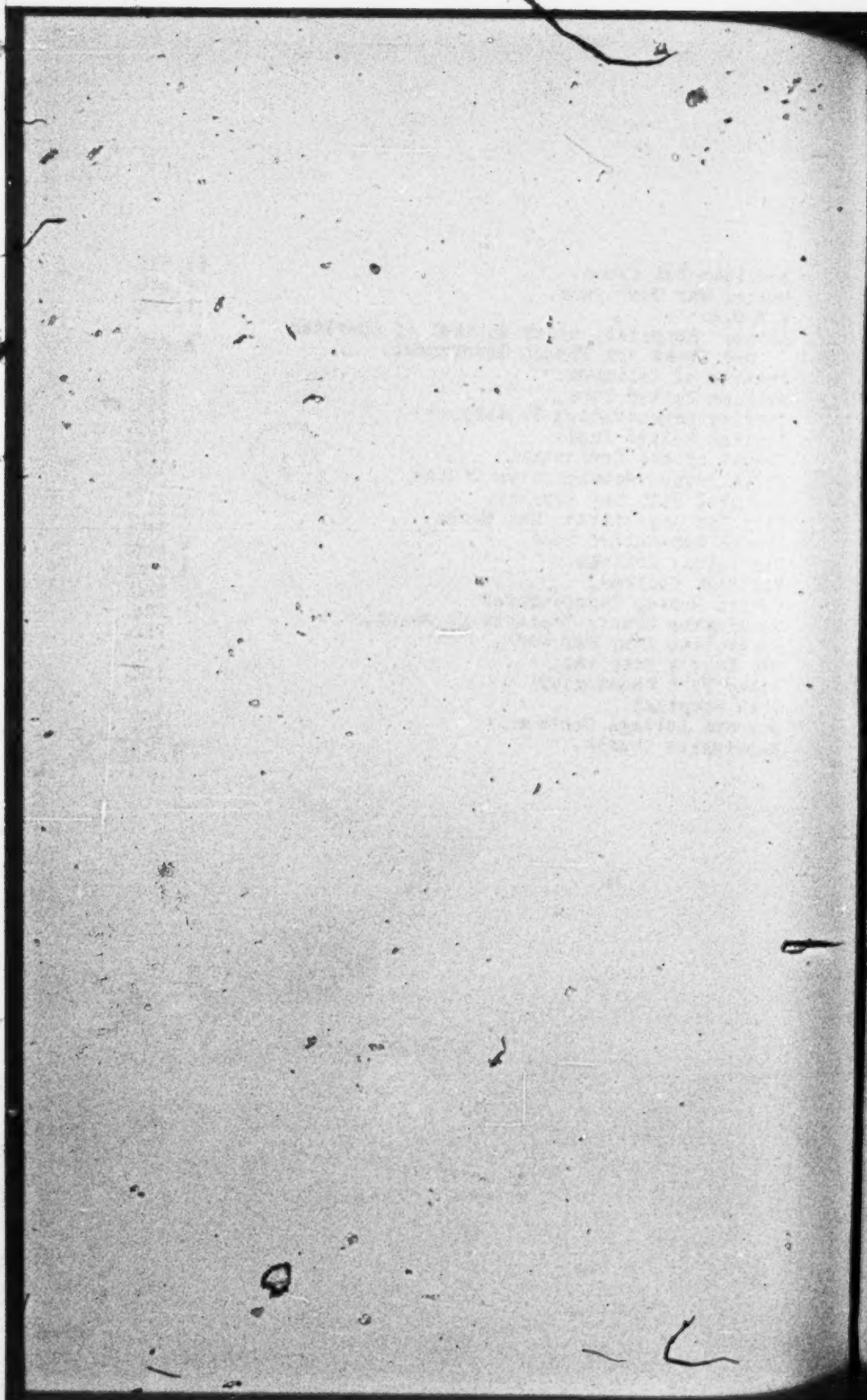
Item No.	1. Kind of Property or Business, State and Kilometer of Wear and Tear (Item)	2. Year Acquired.	3. Cost or Purchase Price or Market Value March 1, 1913.	4. Amount Claimed as Deduction for Wear and Tear and Losses.	When and Year Improvement and Depreciation Charged Off.		5. Amount Previously Allowed.	6. Total Deduction.	Amount Disallowed.
					6. Year.	7. Amount.			

EXPLANATION OF DEDUCTIONS claimed in Schedule A, Item 7 and 8; Schedule B, column 4; Schedule E, column 7; Schedule G, column 2; and Schedule ____

American Red Cross,	$4,675.
United War Work Fund,	4,010.
Y.M.C.A.	1,025.
Allies' Hospital, under control of American Red Cross and French Government,	5,065.
Knights of Columbus,	200.
Belgian Relief Fund,	953.
Charity Organization Society,	574.67
Italian Relief Fund,	750.
Chapel of the Comforter,	250.
Fifth Avenue Presbyterian Church,	110.
Prospect Hill Day Nursery,	150.
City Bar Association War Work,	1,500.
French War Relief Fund,	250.
Middlebury College,	5,000.
Williams College,	5,100.
Junior House, Incorporated,	300.
Bennington County Improvement Association,	225.
Salvation Army War Work,	250.
St. Luke's Hospital,	100.
Stony Wold Sanatorium,	100.
Park Hospital,	50.
Barnard College Canteen,	100.
Bennington Church,	300.
	31,032. X
	31137

(1)

43-0



582747

CLAIM FOR

- [X] ABATEMENT OF TAX ASSESSED
- [ ] CREDIT AGAINST OUTSTANDING ASSESSMENTS
- [ ] REFUND OF TAXES ILLEGALLY COLLECTED
- [ ] REFUND OF AMOUNTS PAID FOR STAMPS USED IN ERROR OR EXCESS

IMPORTANT

COLLECTOR'S NOTATION
District
Amount number
Date received

State of New York
County of New York

NOTICE TO COLLECTOR
Collector must indicate in block above the kind of claim, except in Income Tax cases.

Date received by Commissioner of Int. Rev.

CLAIMS CONTROL SECTION
RECORDED
MAR 13 1924

TYPE OR PRINT

Estate of Frederick B. Jennings
(Laura H. Jennings, Executrix)
(Residence—give street and number as well as city or town and State)
c/o The New York Trust Company, 100 Broadway, New York City. N.Y.
(Business address.)

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said settlement are true and complete:

1. Business in which engaged Decedent's Estate
2. Character of assessment or tax Income Tax
3. Amount of assessment or stamps purchased (State for or upon what the tax was assessed or the stamps affixed.)
4. Reduction of Tax Liability requested (Income and Profits Tax)
5. Amount to be abated
6. Amount to be refunded (Enough greater amount so as is legally refundable)
7. Dates of payment (See Collector's receipts or indorsements of canceled checks)

PERIOD		YEAR
From	January 1	1918
To	December 31	1918

3 N.Y.

4.	$31,108.75
5.	$31,108.75
6.	$31,108.75
7.	$

(If statement covers income tax liability, items 8-11, inclusive, must be answered.)

8. District in which return (if any) was filed Third District of New York
9. District in which unpaid assessment appears Third District of New York
10. Amount of overpayment claimed as credit $
11. Unpaid assessment against which credit is asked; period from to $

Deponent verily believes that this application should be allowed for the following reasons:

The additional assessment has been made against the Estate of Frederick B. Jennings because of the alleged additional tax liability of the decedent. The Revenue Agent's report upon which the additional assessment has been made was prepared subsequent to the date of decedent's death and purports to show certain additional items of income, the failure to report which could be satisfactorily explained were decedent alive today.

Attached hereto is a copy of a letter from the Bureau of Internal Revenue dated January 26, 1924, under authority of which this statement is submitted.

Exceptions to the findings of the Income Tax Unit will be forwarded to the Bureau in Washington.

(Attach additional sheets if necessary.)

Sworn to and subscribed before me this 25th day of February, 1924

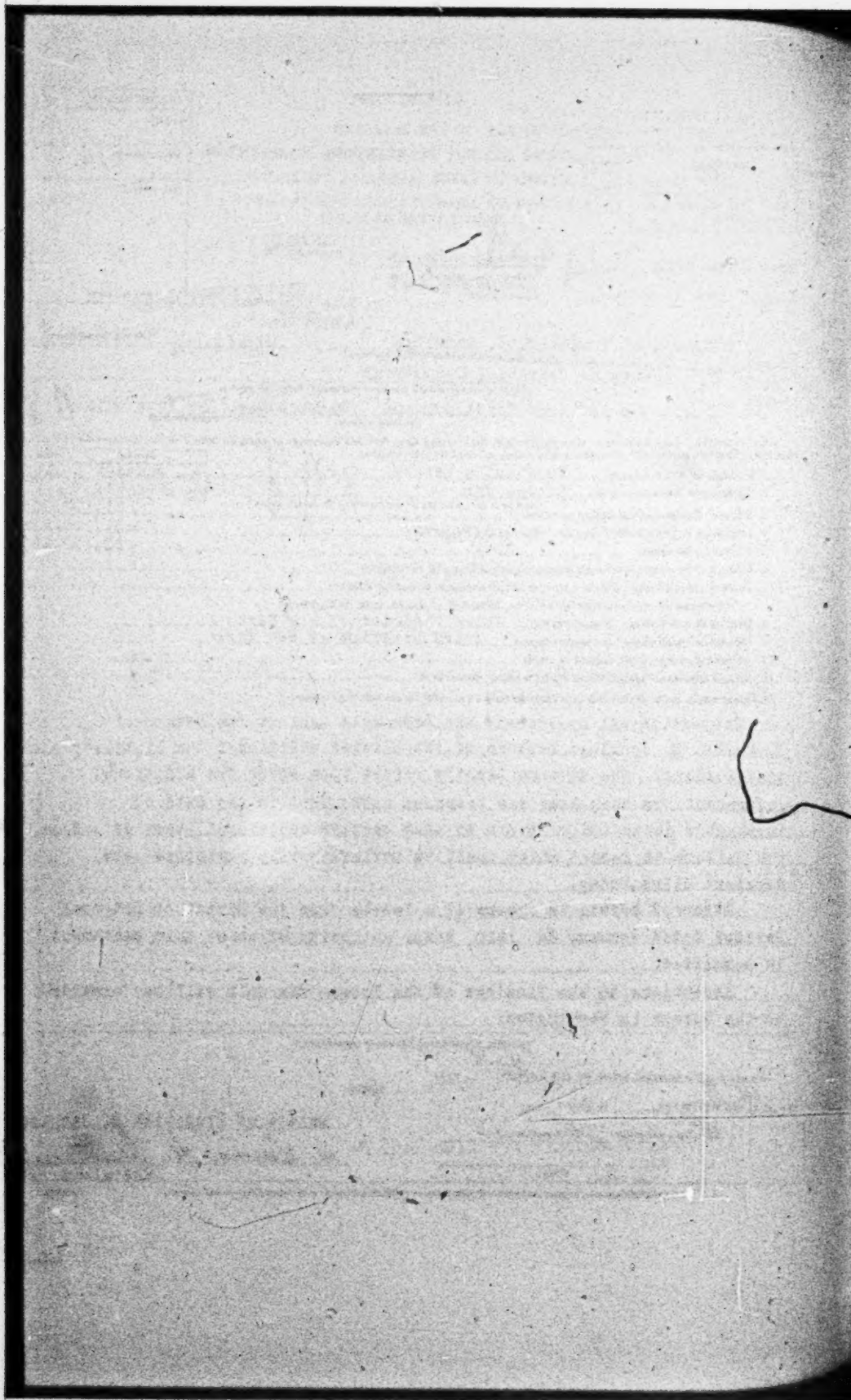
Signed:

Estate of Frederick B. Jennings,
By: Laura H. Jennings
Executrix.

(Title)
NEW YORK (State)

(This affidavit may be sworn to before a Deputy Collector of Internal Revenue or Revenue Agent without charge.)

44-a



CERTIFICATES

Schedule No.

I certify that an examination of the records of the Bureau of Internal Revenue shows the following facts as to the assessment and payment of the tax:

Name of taxpayer.	Number of assessment and period covered.	Kind.	Year.	Month.	Page.	Line.	Amount.	Date paid.	Record in which paid.
							$		

REJECTED
2687

Collector of Internal Revenue

Assistant Chief, Commissioner's Office

Claim No.

I certify that the records of my office show the following facts as to the purchase of stamps:

To whom sold or issued.	Kind.	Number.	Denomination.	Date of sale or issue.	Amount.	If special tax stamp, give Serial number	If special tax stamp, give Period covered

1918

Collector ..... District

Schedule Number 3-Ky.

Allowed or Rejected Number

Claimant Jerauld's Est. Fed't'l B

Address

Examined and submitted for action 19

COMMITTEE ON CLAIMS

Amount claimed $ 31,103.75

Amount allowed $

Amount rejected $ 31,103.75

44-b

(COPY)

TREASURY DEPARTMENT

Washington

Office of
Commissioner of Internal Revenue

January 26, 1924.

IT:PA:2
LLC-202-App

The New York Trust Co.
100 Broadway,
New York, N. Y.

Estate of Frederick B. Jennings,
Mrs. Laura H. Jennings, Executrix.

Sirs:

An examination of the income tax return filed for 1918 by Frederick B. Jennings, 86 Park Avenue, New York, New York, has been made and the results thereof are outlined in the attached statement.

You are advised that in order that the collection of this tax may not be jeopardized by the delay incident to the giving of the usual thirty days notice, as provided for in Section 250(d) of the Revenue Act of 1921, an immediate assessment by the Commissioner of Internal Revenue will be made. The Bureau will, however, entertain a claim in abatement if filed within ten days after the receipt of notice and demand from the Collector of Internal Revenue for your district, in accordance with the provisions of Article 1006 of Regulations 62.

An appeal covering the basis of the claim should be filed, setting forth in full all information upon which you base your protest against the above assessment and any additional facts in support of your claim. If an appeal is not filed, payment should be made upon receipt of notice and demand from the Collector of Internal Revenue of your district.

Respectfully,

J. C. Bright,

Deputy Commissioner.

By (Signed) A. Lewis,

Head of Division.

Enclosure:
Statement.

44-C

MAILED

MAY 23 1924

ORIGINAL MAILED TO TAXPAYER.

IT:PA:8
LHD-EOS

Mrs. Laura H. Jennings,
Executrix, Estate of Frederick B. Jennings,
100 Broadway,
New York, New York.

Madam:

Your claim for the abatement of $31,108.75 individual income tax for the year 1918 has been examined and will be rejected in full.

The basis of your claim is that certain additional items of income that the decedent failed to report could be satisfactorily explained if he were alive today.

In this connection you are advised that in view of the fact that no additional information has been submitted to warrant a change from the previous examination, the agent has been sustained by this office.

The Collector of Internal Revenue for your district will be officially notified of the adjustment at the expiration of thirty days from the date of this letter unless prior to that time evidence is furnished showing the adjustment is incorrect.

Under no circumstances should payment of the amount rejected be made until a bill is received from the Collector of Internal Revenue for your district and remittance should then be made to him.

Respectfully,

J. C. BEIGHT,

Deputy Commissioner.

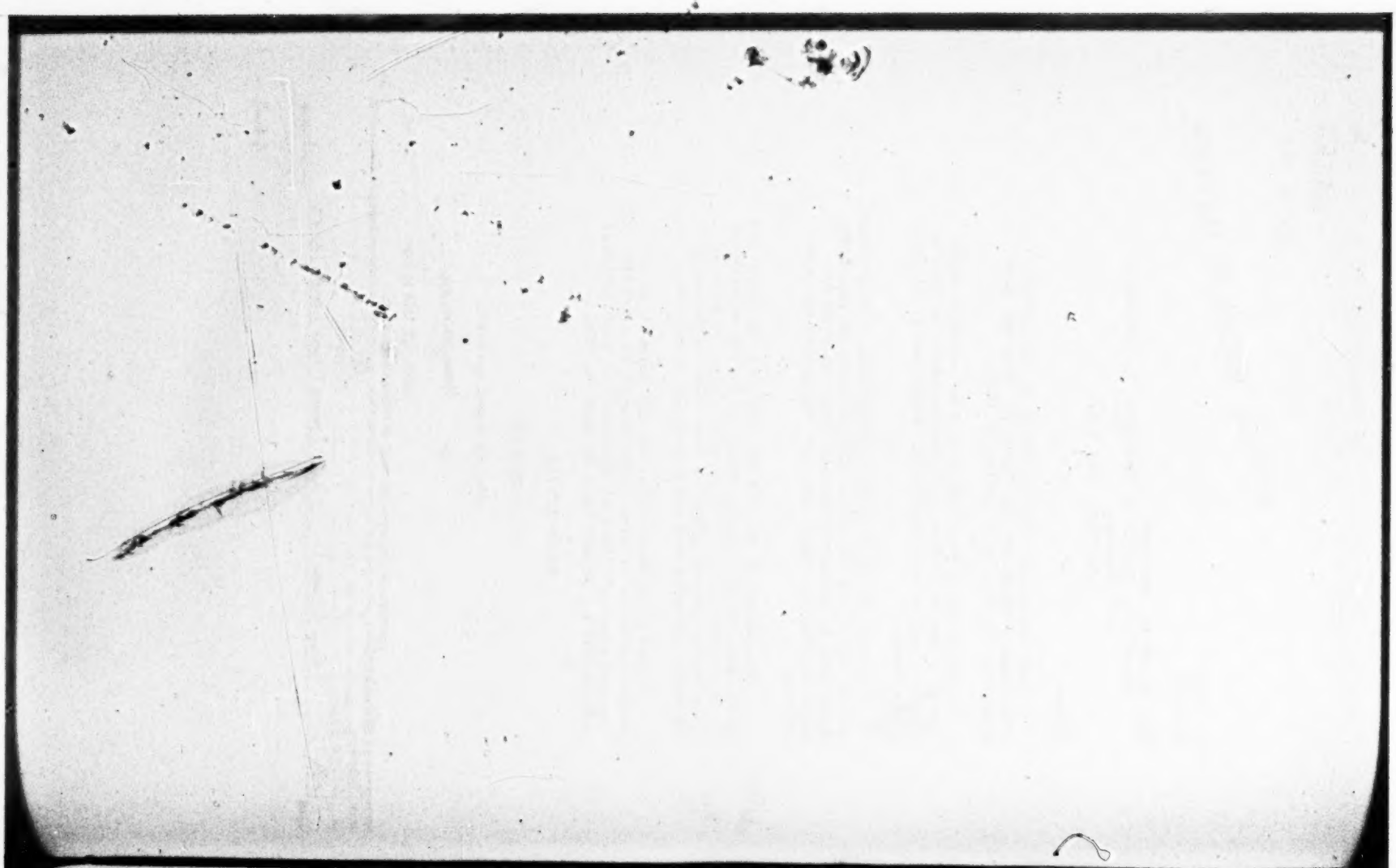
By Signed, Albert Lewis

Head of Division

EACH REVIEW AND APPROVAL MUST BE INITIALED AND DATED

Clerk												
Sec.												
Unit												

44-d



AFFIDAVIT

CLAIM FOR

- ☐ ABATEMENT OF TAX ASSESSED
- ☐ CREDIT AGAINST OUTSTANDING ASSESSMENTS
- ☒ REFUND OF TAXES ILLEGALLY COLLECTED
- ☐ REFUND OF AMOUNTS PAID FOR STAMPS USED IN ERROR OR EXCESS

OK

COLLECTOR'S NOTATION

Date received

Amount number

Date posted

IMPORTANT

File with Collector of Internal Revenue where assessment was made. Not acceptable unless completely filled in.

1454

NOTICE TO COLLECTOR

Collector must indicate in block above the kind of claim, except in Income Tax cases.

Date received by Administrative Unit

RECEIVED

2 SEP 19 1925

State of NEW YORK

County of NEW YORK

Estate of Frederic B. Jennings

TYPE OR PRINT

c/o The New York Trust Company

100 Broadway, New York, N. Y.

929849

This deponent, being duly sworn according to law, deposes and says that this statement is made [illegible] that the facts given below with reference to said statement are true and complete:

MAR 11 1926

1. Business in which engaged	Decedent's Estate		
2. Character of assessment or tax	Income Tax and Interest	Jan. 1 1918 Dec. 31 1918	
3. Amount of assessment or stamps purchased	alleged		$ 35,087.25
4. Reduction of Tax Liability requested	Income and Profits Tax		$ 35,087.25
5. Amount to be abated			$
6. Amount to be refunded (or such greater amount as is legally refundable)		34,087.75 Int.	+ 35,087.25*
7. Date of payment (see Collector's receipts or indorsements of canceled checks)		July 22, 1925	
(If statement covers income tax liability, items 8-11, inclusive, need not be answered.)			
8. District in which return (if any) was filed	3rd District of New York		
9. District in which unpaid assessment appears			
10. Amount of overpayment claimed as credit			$
11. Unpaid assessment against which credit is asked, period to			$

Deponent verily believes that this application should be allowed for the following reasons:

1. The collection of the above sum was barred by the statute of limitations and was illegally effected by threat of duress by the Collector of Internal Revenue for the 3rd Collection District of New York.

2. Interest was illegally collected upon the principal of the alleged additional income tax.

3. See statement attached for further details.

(Please address all correspondence c/o Miller & Chevalier, Southern Building, Washington, D. C.)

RECEIVED

FEB 20 1926

(Attach additional sheets if necessary.)

Sworn to and subscribed before me this 16 day of September, 1925

M. S. Thompson

Notary Public, N. Y. Co. Reg. No. [illegible]

Certified in Kings Co. [illegible]

Signed: Geo. B. Dennis

Attorney in fact for Laura H. Jennings in her capacity as Executrix of Estate of Frederic B. Jennings.

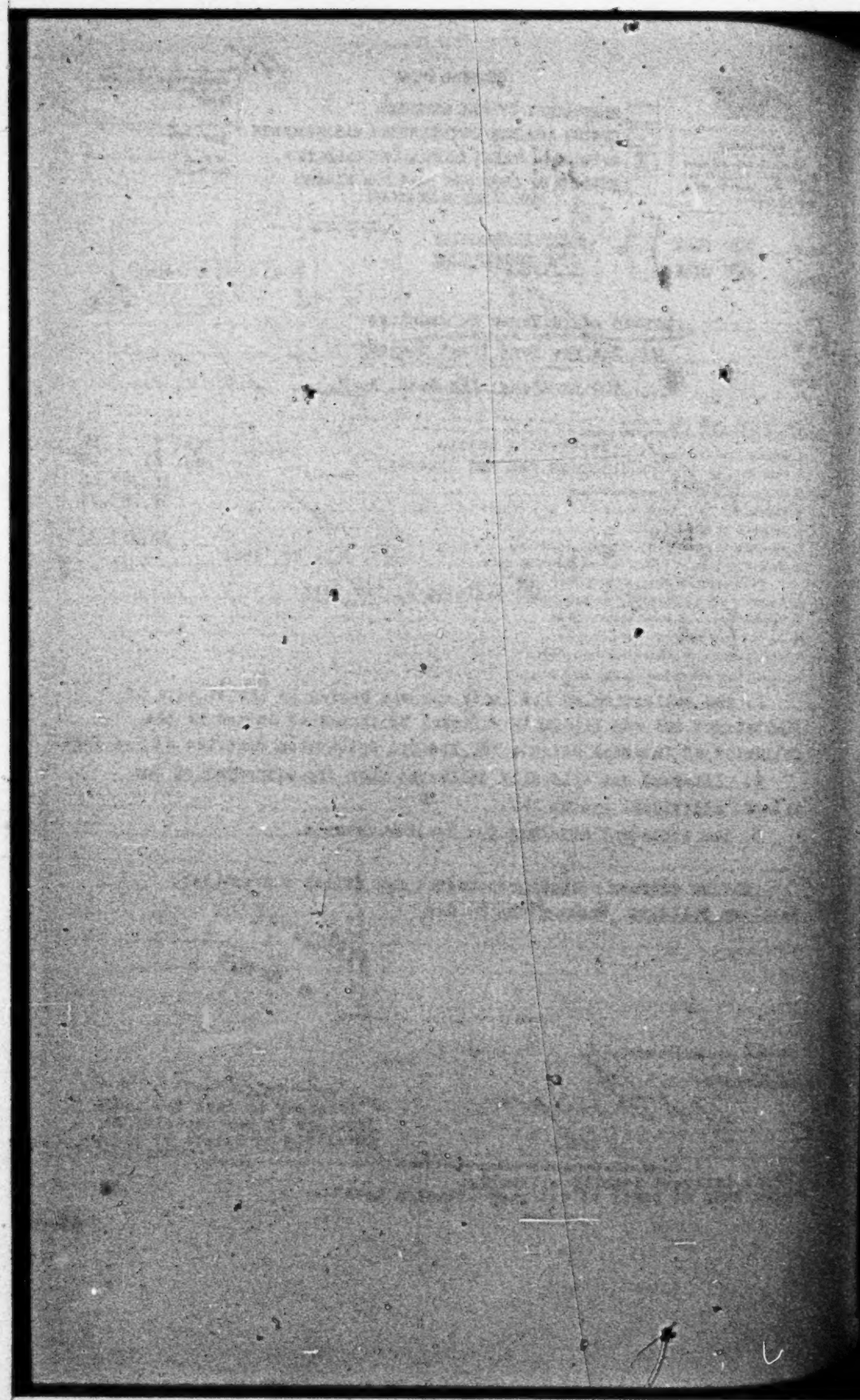
[illegible] Collector of Internal Revenue or Revenue Agent-in-Charge

OCT 24 1925

*Plus interest legally allowable.

**See copy of power of attorney attached hereto.

45-a



CERTIFICATES

I certify that an examination of the records of the Bureau of Internal Revenue shows the following facts as to the assessment and payment of the tax:

Name of taxpayer.	Date of assessment or payment.	Kind.	Year.	Month.	Page.	Line.	Amount.	Date paid.	Number of stamp paid.
							$		

_____ Officer of Internal Revenue.

_____ Assistant Chief, Commissioner's Office.

I certify that the records of my office show the following facts as to the purchase of stamps:

To whom sold or issued.	Kind.	Number.	Denomination.	Date of sale or issue.	Amount.	If spoiled or lost, state: Kind number.	If spoiled or lost, state: Value.
					$		

_____

_____ Officer. _____, District.

REJECTED
5329
I T SCHEDULE

Schedule Number _____ Listed _____

Allowed or Rejected Number _____ _____ (Name of taxpayer)

Claimant _____

Address _____

Examined and submitted for action _____, 19__.

_____

Date received by C.C. 6-30-38

Amount claimed $ 35057.35

Amount allowed $ _____

Amount rejected $ 35057.35

46-b

ESTATE OF FREDERIC B. JENNINGS

Statement of Facts and Basis of Claim for Refund—1918

On July 22, 1925 the executrix of the Estate of Frederic B. Jennings paid under protest and threat of duress the sum of $35,087.25 to the Collector of Internal Revenue of the Third District of New York on account of additional income taxes and interest thereon alleged to be due from the Estate of Frederic B. Jennings because of an alleged increased tax liability alleged to have been incurred during the lifetime of said Frederic B. Jennings.

The notice and demand received from the office of Collector Charles W. Anderson set forth the sum demanded as follows:

Tax	$31,108.75	
Int. at 6% from 2/15/24 to 8/14/24	933.26	
9/4/24 to 7/8/25 at 1%	3,045.24	$35,087.25

It is respectfully submitted that the collection of the $35,087.25 as aforesaid was illegal, and a refund of said sum, together with such interest thereon as may be lawfully allowed, is requested.

The following are among the grounds for the claim with respect to the principal sum of $31,108.75:

1. The collection of the additional tax was barred by the statute of limitations, being specifically prohibited by Section 250(d) of the Revenue Act of 1918.

2. In 1918 Mr. Jennings was charged with $4,462.10 as interest by the brokerage house of H. P. Goldschmidt & Co., New York City, and credited by the same firm with the sum of $771.98 on account of interest accrued. This left a net charge of $3,690.12, which was not taken as a deduction on the original return and which the Revenue Agent failed to allow. This item should be deducted from net income.

The following are among the grounds for the claim with respect to interest:

1. The collection of the interest was barred by the statute of limitations, being specifically prohibited by Section 250(d) of the Revenue Act of 1918.

2. There is no provision for interest on additional taxes claimed under the Revenue Act of 1918 until after assessment has been made.

3. Estates of deceased persons are specifically exempted from the interest provisions of the law by Section 250(e) of the Revenue Act of 1918.

Prior to any final determination with respect to this claim for refund an oral hearing is requested, and since it is highly desirable to have the affairs of the Estate settled as soon as possible, it

would be greatly appreciated if the time for the conference could be fixed at as early a date as possible.

Respectfully,

Attorney in fact for Laura B. Jennings, in her capacity as Executrix of Estate of Frederic B. Jennings.

sions of Section 177 of the Judicial Code as amended by Section 615 of the Revenue Act of 1928, together with the costs of this action, said costs amounting to $30.25.

Now, therefore, pursuant to Section 989 of the Revised Statutes of the United States, I hereby certify that there was probable cause for the acts done by the defendant, the Collector of Internal Revenue, wherefore said judgment is due and recoverable against him.

Dated New York, October 29, 1929.

Woolsey, U. S. D. J.

Consented to.

Miller & Chevalier, Attorneys for Plaintiff. Charles H. Tuttle, United States Attorney, Attorney for Defendant.

[fol. 35] In United States District Court, Southern District of New York

L. 41/214

Laura H. Jennings, as Executrix of the Last Will and Testament of Frederic B. Jennings, Deceased, Plaintiff,

vs.

Charles W. Anderson, Individually and as United States Collector of Internal Revenue for the Third District of New York, Defendant

Defendant's Bill of Exceptions and Order Settling Same

Caption

Be it remembered that this cause came on to be heard at a stated term of this Court begun and holden in the City of New York in and for the Southern District of New York on the 11th day of September, 1929, before the Honorable William I. Grubb and a jury of one, upon an agreed stipulation of facts and exhibits offered by the defendant, the plaintiff appearing by Miller & Chevalier, and the defendant appearing by Charles H. Tuttle, United States Attorney, Southern District of New York, Leon E. Spencer, Assistant United States Attorney, of counsel.

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties hereto and by their respective attorneys, that the [fol. 36] following facts shall be taken as true for the purposes of this proceeding; provided, however, that this stipulation shall be without prejudice to the right of either party to introduce other and further evidence not inconsistent with the facts herein stipulated to be taken as true:

I. That the plaintiff, Laura H. Jennings, is and has been at all times since June 17, 1920, the duly appointed and acting executrix of the Last Will and Testament of Frederic B. Jennings, deceased.

II. That the defendant was at the time of the commission of the acts herein complained of, and is now the duly appointed and acting United States Collector of Internal Revenue for the Third District of New York.

III. That this is a suit of civil nature at common law where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of Three Thousand Dollars ($3,000) and arises under the Constitution and Revenue Laws of the United States.

IV. That on or before March 15, 1919, Frederic B. Jennings in good faith filed with the United States Collector of Internal Revenue for the Third Collection District of New York his income tax return for the calendar year 1918, and, at the time of filing, paid to the said Collector the sum of $28,727.54, the amount of income tax liability indicated by the said return, which amount was assessed against said Frederic B. Jennings by the Commissioner of Internal Revenue shortly thereafter.

[fol. 37] V. That said Frederic B. Jennings died on May 26, 1920.

VI. That on February 8, 1924, the Commissioner of Internal Revenue entered upon one of the assessment lists an alleged assessment against the estate of Frederic B. Jennings, then deceased, for an additional income tax for the said calendar year 1918 in the amount of $31,108.75.

VII. That on February 15, 1924, defendant addressed to the estate of Frederic B. Jennings, a notice and demand for the payment of the said alleged additional tax of $31,108.75, and interest thereon, under threat of distraint in case the said additional tax and interest should not be paid within ten days.

VIII. That the plaintiff refused to comply with the said demand, that a claim in abatement was filed on February 25, 1924, that said claim was rejected on August 14, 1924, and a second notice and demand for payment was issued on September 4, 1924.

IX. That thereafter, and under date of July 1, 1925, the defendant issued to a Deputy Collector of Internal Revenue for the Third District of New York a warrant of distraint against the property of said Frederic B. Jennings' estate for the collection of the aforesaid additional taxes and interest, amounting to $35,087.25, by process of levy, by distraint and sale of said property.

X. That on July 8, 1925, defendant addressed to the estate of Frederic B. Jennings, a further notice and de-
[fol. 38] mand for the payment of the said alleged additional tax of $31,108.75 and interest thereon, under similar threat of distraint. A true copy of said notice and demand is attached to the complaint in this action and marked "Exhibit A".

XI. That on July 30, 1925, the plaintiff under protest and solely because of the duress and threat of distraint by defendant, paid to defendant the said alleged additional tax of $31,108.75, plus interest thereon demanded in the sum of $3,978.50, making a total payment of $35,087.25.

XII. That on September 19, 1925, the plaintiff duly filed with the defendant a claim for refund of the said alleged additional tax and interest; the Commissioner, by a letter addressed to the plaintiff dated May 13, 1926, rejected the claim for refund in the principal amount of $31,108.75, stating that the matter of the collection of the interest thereon in the amount of $3,978.50 would be referred to defendant for adjustment; subsequently defendant refunded said interest, with interest thereon, but continues to refuse to refund the said principal amount of $31,108.75 or any

part thereof. True copies of the said claim for refund and of the said letter are attached to the complaint in this action and marked respectively "Exhibit B" and "Exhibit C".

XIII. That on or before March 15, 1920, said Frederic B. Jennings in good faith filed with the defendant his income tax return for the calendar year 1919, and, at the time of filing, paid to the defendant the sum of $31,819.66, the [fol. 39] amount of income tax liability indicated by the said return, which amount was assessed against said Frederic B. Jennings by the Commissioner of Internal Revenue shortly therafter.

XIV. That on May 17, 1924, the Commissioner of Internal Revenue entered upon one of the assessment lists an alleged assessment against said Frederic B. Jennings personally, who was then deceased, for an additional income tax for the said calendar year 1919 in the amount of $46,287.04.

XV. That on May 27, 1924, a notice and demand for the payment of the said alleged additional tax in the amount of $46,287.04, was addressed to said Frederic B. Jennings, who was then deceased, under threat of penalty and interest in case the said additional tax should not be paid on or before June 7, 1924.

XVI. That thereafter, and under date of May 20, 1925, the defendant issued to a Deputy Collector of Internal Revenue for the Third District of New York, a warrant of distraint against the property of said Frederic B. Jennings' estate for the collection of the aforesaid additional taxes and interest, amounting to $52,471.74, by process of levy, by distraint and sale of plaintiff's property.

XVII. That on July 8, 1925, defendant addressed to Frederic B. Jennings, who was then deceased, a second notice and demand for the payment of the said alleged additional tax and interest thereon, under threat of distraint. A true copy of the said notice and demand is attached to the complaint in this proceeding and marked "Exhibit D".

[fol. 40] XVIII. That on July 30, 1925, the plaintiff under protest and solely because of the duress and threat of dis-

traint by the Commissioner, paid the said alleged additional tax of $46,287.04, plus interest thereon demanded in the sum of $6,184.70, making a total payment of $52,471.74.

XIX. That on September 19, 1925, the plaintiff duly filed with the defendant a claim for refund of the said alleged additional tax and interest; the Commissioner, by a letter addressed to the plaintiff dated May 13, 1926, rejected the claim for refund in the principal amount of $46,287.04, stating that the matter of the collection of the interest thereon in the amount of $6,184.70 would be referred to the defendant for adjustment; subsequently defendant refunded the said interest, with interest thereon, but continues to refuse to refund the said principal amount of $46,287.04 or any part thereof. True copies of the said claim for refund and of the said letter are attached to the complaint herein and marked respectively "Exhibit E" and "Exhibit F".

XX. That at the time when the aforesaid warrant of distraint for the alleged additional taxes claimed for the year 1918 was issued, more than five years had elapsed since the filing of said Frederic B. Jennings' Federal income tax return for the year 1918, and that no warrant of distraint or other proceeding for the collection of said alleged additional taxes was issued or had other than as aforesaid.

XXI. That at the time when the aforesaid warrant of distraint for the alleged additional taxes claimed for the [fol. 41] year 1919 was issued, more than five years had elapsed since the filing of said Frederic B. Jennings' Federal income tax return for the year 1919, and that no warrant of distraint or other proceeding for the collection of said alleged additional taxes was issued or had other than as aforesaid.

Dated March 27, 1928.

Miller & Chevalier, Attorneys for Plaintiff. Charles H. Tuttle, United States Attorney, Attorney for Defendant.

The defendant offered in evidence photostatic copy of Individual Income Tax Return for 1918 (with statement attached) filed by Frederic B. Jennings, New York, New York.

Marked Defendant's Exhibit A.

Defendant offered in evidence photostatic copies of Claim for Abatement of $31,108.75 (with copy of letters attached), Income Tax for 1918, filed by Laura H. Jennings, Executrix, Estate of Frederic B. Jennings, New York, New York; Copy of letter, dated January 26, 1924, to estate of Frederic B. Jennings, care of New York Trust Co., from J. G. Bright, Deputy Commissioner; Copy of letter, dated May 23, 1924 to Mrs. Laura H. Jennings, from J. G. Bright, Deputy Commissioner.

Marked Defendant's Exhibit B.

Defendant offered in evidence photostatic copy of Claim for Refund of $35,087.25 (with statement attached), Income Tax and Interest for 1918, filed by Sidney B. Silleck, [fol. 42] Attorney-in-Fact for Laura H. Jennings in her capacity as Executrix of Estate of Frederic B. Jennings, New York, New York.

Marked Defendant's Exhibit C.

Defendant offered in evidence photostatic copy of Copy of letter dated May 14, 1926 to Estate of Frederic B. Jennings, % New York Trust Company, New York, New York from C. R. Nash, Assistant to the Commissioner of Internal Revenue.

Marked Defendant's Exhibit D.

Thereupon counsel for the plaintiff moved that a verdict be directed for the plaintiff and counsel for the defendant moved that a verdict be directed for the defendant.

Thereupon the Court, after due consideration, directed a verdict for the plaintiff to which the defendant duly excepted and the exception was allowed.

Upon the annexed consent, and on motion of Charles H. Tuttle, United States Attorney, attorney for the defendant, I have settled, allowed and signed the foregoing, together with exhibits offered in evidence at the trial, as and for the defendant's bill of exceptions and order that the same be filed.

Dated February —, 1930.

W. I. Grubb, U. S. D. J.

Consented to.

Miller & Chevalier, Attorneys for Plaintiff. Charles H. Tuttle, United States Attorney, Attorney for Defendant.

[fol. 43] DEFENDANT'S EXHIBIT "A"

(Here follows exhibit, side folios 43a, 43b, and 43c)

[fol. 44] DEFENDANT'S EXHIBIT "B"

(Here follows exhibit, side folios 44a, 44b, 44c, 44d)

[fol. 45] DEFENDANT'S EXHIBIT "C"

(Here follows exhibit, side folios 45a, 45b, 45c, and 45d)

[fol. 46] DEFENDANT'S EXHIBIT "D"

Received May 11, 1926

IT:PA:PYA. ARN.

May 14, 1926.

Estate of Frederick B. Jennings, c/o New York Trust Company, 100 Broadway, New York, New York.

SIRS: Your claims for the refund of $35,087.25 and $52,471.74, individual income taxes and interest for the years 1918 and 1919, respectively, have ben examined.

The basis of your claims is the statement that the collection of the above sums was barred by the statute of limitations; that the 1919 assessment was illegal; and that interest was illegally collected upon the principal. It is also stated in the 1918 claim that the deduction against gross income for interest paid should be increased.

At the conference held in this office April 20, 1926, it was contended that inasmuch as deficiencies in tax were assessed against a taxpayer who is no longer in existence, the taxpayer having died, the collection of the taxes was barred by Section 250 (d) of the Revenue Act of 1918.

It is disclosed that the deficiencies of $31,108.75 for 1918 and $46,287.04 for 1919 were assessed within the five-year period prescribed by law, and having been assessed within

that period, they could then be collected within six years from the date of the assessments, in accordance with the provisions of Article 1272 of Regulations 65.

The amount of the taxable net income for the year 1918 was determined by an investigation of the taxpayer's books of account and records, the results of which were set forth in the report of the Supervising Internal Revenue Agent at New York, New York, submitted to this office under date of December 18, 1923. The total deduction of $35,122.57, claimed in the return for interest paid, was allowed. No evidence has been submitted in substantiation of the claim that an additional amount of $3,690.12 should be allowed, and accordingly no change has been made in that item.

Your claims in regard to the above items will, therefore, be rejected by this office.

[fol. 46a] You are advised that the matter of the collection of interest, which was added to the amount of the deficiencies at the rate of 1% per month, will be referred to the Collector of Internal Revenue for your district for adjustment.

The rejection of your claims will officially appear on the next schedule to be approved by the Commissioner.

Respectfully, C. R. Nash, Assistant to the Commissioner, by (Signed) A. Lewis, Head of Division.

op- 2.

Rejected. 5329 I. T. Schedule.

[fol. 47] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS

The defendant, Charles W. Anderson, Collector of Internal Revenue, for his assignment of errors respectfully alleges that:

1. The court erred in directing a verdict in favor of the plaintiff for the full amount demanded in the complaint.

2. The court erred in refusing to direct a verdict for the defendant and in refusing to dismiss the complaint in its entirety on the merits.

3. The court erred in holding that the collection of the sum of $31,108.75 was not stayed within the meaning of Section 611 of the Revenue Act of 1928 (U. S. C. A., Title 26, Section 2610).

[fol. 48] 4. The court erred in not holding that the filing of the claim for abatement of $31,108.75 with the Commissioner of Internal Revenue operated to stay the collection of the said tax within the terms of Section 611 of the Revenue Act of 1928.

5. The court erred in holding that Section 611 of the Revenue Act of 1928 does not act retroactively so as to prevent the plaintiff from recovering the sum of $31,108.75 assessed prior to June 2, 1924 and for the abatement of which the plaintiff filed a claim for abatement on or about February 25, 1924.

6. The court erred in holding that the collection of said sum of $31,108.75 and interest by the Collector of Internal Revenue for the Third District of New York was an illegal collection or an overpayment under the provisions of Section 607 of the Revenue Act of 1928 (U. S. C. A., Title 26, Section 2607).

7. The court erred in holding that Section 1106 (a) of the Revenue Act of 1926 operated so as to make the collection of the sum of $31,108.75 by the Collector of Internal Revenue for the Third District of New York on July 22, 1925, illegal.

8. The court erred in holding that the collection of $31,108.75 on July 22, 1925 was barred by the Statute of Limitations.

9. The court erred in holding that Section 611 of the Revenue Act of 1928 (U. S. C. A., Section 2611) is unconstitutional.

[fol. 49] 10. The court erred in holding that the filing of the claim for abatement of the tax by the plaintiff did not operate as a waiver of the five year Statute of Limitation as to the collection of said tax.

11. The court erred in not holding that under Section 611 of the Revenue Act of 1928 the running of the period

of limitation with respect to the collection of the said tax was suspended by the filing of the claim for abatement.

Wherefore Charles W. Anderson, prays this Honorable Court that the errors assigned may be corrected and that the judgment of the District Court of the United States for the Southern District of New York be reversed with costs and that he may have such other and further relief as to this court may seem just.

Dated New York, N. Y., December 23, 1929.

Charles H. Tuttle, United States Attorney, Attorney for Defendant. Office & P. O. Address: U. S. Courts & P. O. Bldg., B'way & Park Row, Borough of Manhattan, City of New York.

[fol. 50] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL AND ORDER ALLOWING SAME

To the Honorable the Judges of the United States District Court for the Southern District of New York:

Charles W. Anderson, Collector of Internal Revenue, the above named defendant, feeling himself aggrieved by a judgment made and entered herein on October 11, 1929, in the sum of $31,108.75, together with interest and costs, does hereby appeal from said judgment to the United States Circuit Court of Appeals for the Second Circuit for the reasons specified in the assignment of errors which is filed herewith, and prays for an order allowing him to prosecute said appeal and that a transcript of record, papers and proceedings upon which the said order was made, may be duly authenticated and sent to the Circuit Court of [fol. 51] Appeals for the Second Circuit and that a citation be issued, as provided by law.

Dated New York, N. Y., December 23, 1929.

Charles H. Tuttle United States Attorney, Southern District of New York, Attorney for Defendant. Office & P. O. Address: U. S. Courts & P. O. Bldg., Borough of Manhattan, City of New York.

It is ordered that the appeal, as above prayed for, be allowed.

Dated New York, N. Y.,

Alfred C. Coxe, U. S. D. J.

[fol. 52] Citation, in usual form, omitted in printing.

[fol. 53] In United States District Court

[Title omitted]

Stipulation as to Record

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated February 28, 1930.

Miller & Chevalier, Attorneys for Plaintiff. Charles H. Tuttle, United States Attorney, Attorney for Defendant.

[fol. 54] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 55 & 56] In United States Circuit Court of Appeals for the Second Circuit

Laura H. Jennings, as Executrix of the Last Will and Testament of Frederick B. Jennings, Deceased, Appellee,

against

Charles W. Anderson, Individually and as United States Collector of Internal Revenue for the Third District of New York, Appellant

Before L. Hand, Augustus N. Hand and Chase, Circuit Judges

Appeal by the defendant from a judgment for the plaintiff entered by the District Court for the Southern District

of New York upon a directed verdict in an action at law to recover income taxes paid to a collector under duress.

Leon R. Spencer for the appellant.
Ewing Everett for the appellee.

OPINION

Per CURIAM:

This case presents the same questions as those discussed in the opinion in Reeves v. Anderson, handed down herewith. In accordance with that opinion the judgment herein will be reversed and a new trial ordered.

Judgment reversed; new trial ordered.

[fol. 57] IN UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

LAURA H. JENNINGS, as Extx., etc., Plaintiff-Appellee,

v.

CHARLES W. ANDERSON, as Collector, etc., Defendant-Appellant

Appeal from the District Court of the United States for the Southern District of New York

JUDGMENT—Filed July 28, 1930

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be, and it hereby is, reversed, with costs and cause remanded for a new trial. Further ordered that execution be issued for the collection of said costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[File endorsement omitted.]

[fol. 58] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

STIPULATION RE OPINION IN CASE OF REEVES VS. ANDERSON

It is hereby stipulated and agreed by and between the parties hereto and by their respective attorneys that the opinion of the Circuit Court of Appeals for the Second Circuit in the case of Daniel Reeves, Inc., Appellant, against Charles W. Anderson, individually and as Collector of Internal Revenue for the Third District of New York, shall be included as part of the certified copy of the record in this case.

Miller & Chevalier, Attorneys for Appellant. Robert E. Manley, Acting U. S. Attorney, Attorney for Appellee.

[fol. 59] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

DANIEL REEVES, INC., Appellant

against

CHARLES W. ANDERSON, Individually and as Collector of Internal Revenue for the Third District of New York, Appellee

Before L. Hand, Augustus N. Hand and Chase, Circuit Judges

Appeal by the plaintiff from a judgment of the District Court for the Southern District of New York dismissing a complaint in an action at law to recover income and profits taxes, paid under duress.

Elkan Turk for the appellant.
Walter H. Schulman for the appellee.

OPINION

L. HAND, Circuit Judge:

The taxpayer filed its return for 1919 on March 11, 1920, and during the year paid the taxes disclosed. The com-

missioner assessed a deficiency in March, 1924; the collector made demand for it on April 5, 1924; the taxpayer filed a claim for abatement on the sixteenth of that month. There matters rested without change until September 28, 1925, when the claim was rejected and on November 14, [fol. 60] 1925, the taxpayer paid the deficiency with interest under threat by the collector. After proper preliminary steps this suit was brought against the collector in November, 1927. The question is whether the delay in collecting the tax from March 11, 1920, the date of the return, to November 14, 1925, made the collector's act a tort on which a cause of action arose for money had and received.

In spite of the extraordinary differences in judicial opinion which the situation has evoked—differences which only the Supreme Court can eventually settle—the underlying facts are not complicated. Section 250 (d) of the Revenue Act of 1918 set a limitation of five years after return upon the Commissioner's power to "determine and assess" the amount of the tax. The same section in the Act of 1921 reduced the period to four years, but kept it at five as to assessments under the Act of 1918. Until 1924 the Treasury had no longer period within which to collect taxes through the courts, than to assess them, so that if the Commissioner assessed the tax on the last day of the proper period, he could begin no "suit or proceeding in court" to collect it. He had not in practise paid much attention to this feature of the law because he supposed until February, 1927, that he had power for an indefinite time after assessment to distrain, and this was ordinarily remedy enough. The decision of the Supreme Court in Bowers v. N. Y. & Albany Lighterage Co., 273 U. S. 346, which held that distress was barred [fol. 61] along with "suits and proceedings", disappointed this assurance and there was thereafter no way to collect, once the time to assess had expired. Sections 607 and 611 of the Act of 1928 were passed after this decision; the first made the assessment or payment of any tax after the period of limitation had expired an "overpayment" and gave the taxpayer a "credit or refund" for it, thus leaving matters as they had been, except to repeal section 1106 (a) of the Act of 1926. The second section excepted from the operation of the first all taxes assessed before the Act of 1924 went into effect, upon condition that the taxpayer had filed a claim for abatement which had stayed collection.

The distinction was a fair one. Section 278 (d) of the Act of 1924 had given the Treasury six years after assessment to collect, and while it took until January, 1929, finally to settle it that this applied only to assessments made after June 2, 1924, the effective date of the Act of 1924, (Russell v. U. S., 278 U. S. 181), that had apparently been already divined as a possibility. So it followed that while the Treasury had six years after assessment to collect taxes assessed after June 2, 1924, it had only four or five years from the return as to all assessed theretofore. Although the Commissioner had misconceived the law as to these, Congress made no effect to reclaim them by reimposition; the delay remained a final bar. Only in case the taxpayer had positively caused the Treasury's inaction by demanding a rehearing, was his advantage taken from him. Congress refused to convert indulgence into immunity; certainly nothing could be more reasonable. We have only to determine whether the plan conceived in this spirit has miscarried.

[fol. 62] Specifically the arguments by which this exemption is sought to be secured are first, that collection was not "stayed" by the claim for abatement. If by this is meant that the claim raised no legal bar to collection, the argument is unanswerable; it did not. So far as we can discover no statute before 1924 gave such an effect to a claim for abatement except section 234 (a) (14) of the Act of 1918. This had to be filed with the return and not in response to an assessment, and was limited to inventory losses and rebates. Section 611 certainly did not refer to these. Section 279 of the Act of 1924 did indeed provide for a compulsory stay of collection, but only in the case of jeopardy assessments levied under section 274 (d) of that act. Aside from the limited scope of this section, it did not reach the only assessments touched by section 611, those levied before June 2, 1924. Thus, if we construe "stayed" to mean a legal bar, we should give the section no scope whatever. Patently it must refer to those cases in which the collector did not proceed with enforcement while the Commissioner was engaged in passing upon the claim for abatement; such a stay has in practise been recognized as ancillary to the Commissioner's power to remit, (Title 26, Sec. 149, U. S. Code). Had he insisted upon collection before disposing of the claim, the taxpayer would with some justice have

been vocal in protest. It is ungenerous now to complain that he did not do so.

[fol. 63] Next, the plaintiff says that if "stayed" means a voluntary stay, the record must show that the claim was the cause of it, and does not. The assessment was collectible as soon as made; no effort was in fact made to collect it till the claim was disposed of; the sequence of the two suggests a causal relation between them. Moreover, to suppose that the collector meanwhile withheld action for any other reason than because his collection might turn out to be unwarranted, is to assume that he was slack in his duty; we are entitled to assume the opposite. Article 1032 of Regulations 45 puts collection in his discretion in such circumstances; his inaction would have been without excuse except for the claim. Regardless of the eventual burden of proof on the issue, the presumption is that the delay was caused by the claim; and there was no proof to meet it.

The next point demands more attention. The argument runs as follows. Section 607 provides that a tax assessed or paid after the period had expired should be "credited or refunded". Section 611 is merely an exception from this provision; it does not give any right to the Treasury to hold money which it had no right to hold before. Section 607 was passed to be rid of the effect of Section 1106 (a) of the Act of 1926, which had provided that although the expiration of the period of limitation of a tax extinguished the debt, the Commissioner should not credit or refund it unless it was not in fact due when the taxpayer paid it. This section we held not to prevent an action for money had, (Ellay Co. v. Bowers, 25 Fed. (2) 637); it follows that [fol. 64] at that time the taxpayer could have got a "refund" by action, though he could not from the Commissioner. All that section 607 has done is to restore the administrative remedy which section 1106 (a) took away, leaving the taxpayer in possession of all remedies, except against the Commissioner, (§ 611), in cases where he had induced the delay. Since, however, the remedy of an action at law existed all along, and since it did not therefore need any assistance from section 607, section 611 is irrelevant. It was not intended as an affirmative limitation upon pre-existing remedies.

This argument is not dependent alone upon the word "refund" in section 607; it has a broader historical basis, and it must be confessed that it is plausible. We think it impossible however so to read section 611 for several reasons. Section 3226 of the Revised Statutes as amended in 1926, (Sec. 1113), requires the filing of a claim for refund or credit as a condition precedent to suit against the collector. It certainly would be an unusual thing to require as a condition precedent an application which by hypothesis could not be granted. But even if we assume that Congress might have wished still to impose the abortive claim for abatement as a condition on the action, the consequences are absurd. Nobody has a claim for refund who has not a possible right of action. The time for presenting the claim is three or four years (Title 26, Sec. 1065), and the time within which to sue is five, (R. S. § 3226), so that the time to file the claim expires first. The effect of section 611, [fol. 65] which forbad such claims, would only be that taxpayers should not get that cash from the Commissioner which they still could get by way of judgment. It is difficult to conjure any reason which Congress could have had for forbidding the more commodious way of settling such controversies, and still exposing the Treasury to actions at law which must result in exactly the same thing. It would take the strongest possible language to force us to such a conclusion.

The language of section 607 does not go far enough. It makes the taxes described an "overpayment"; that alone was enough to create a cause of action at law, though it was not necessary, as things stood. The second clause in the sentence changed the situation formerly created by section 1106 (a) of the Act of 1926, the effect of which had been to drive the taxpayer to suit. Section 611 enacted that the excepted assessments and payments should "not be considered as an over-payment", and in so doing positively struck the foundation from under any recovery by action, by credit or by refund; it was more than an exception to the second clause of section 607; it dealt with the merits of the recovery as well as with the remedies available.

This disposes of the only questions that seem to us important, for we cannot so regard the argument against the

validity of the statute, though it is very earnestly presented. Taxpayers in the plaintiff's position do indeed lose an immunity once acquired; they lose it—we will as-
[fol. 66] sume arguendo—by the mere fiat of the statute; Congress has seen fit in effect to impose the tax upon them de novo at a time long after the events took place on which it depends. This is charged to be in violation of the Fifth Amendment, and so it might be, if there had been no original tax, no claim for abatement, no delay of the Treasury in the disposal of that claim, and a consequent loss of all remedies. Were the Fifth Amendment a remorseless pattern which all legislation must fit, the argument might even so be troublesome; might indeed be conclusive. But constitutional limitations are not indifferent to the occasions of the statutes they affect. They represent a mood rather than a command, that sense of moderation, of fair play, of mutual forbearance, without which states become the prey of faction. They are not the rules of a game; their meaning is lost when they are treated as though they were. It is quite true that the section took away a defense from the plaintiff; he is right to complain unless we can question the kind of defense it was. The moment we do, it must appear to any fair person that he ought not to have it. What the Treasury lost through its procrastination, it lost forever, even though it was under an honest mistake as to its remedies. If the taxpayer did nothing to provoke or encourage its delay, perhaps it was fair that his liabilities once dead should not be revived; there is a deep instinct behind any statute of limitations. But if he asked for re-
[fol. 67] consideration because he had been unlawfully treated, and if his complaint was entertained, then by virtue of an equally deep instinct, it is unfair to allow him to treat that conduct as a fault which he was the means of procuring. He ought not in short to be able to avoid his share of the public burdens, because the authorities consented to give him a considerate hearing. It does not help to call the bar of the statute a vested right; that is at best a figure of speech, which does now hallow everything that is past, a default in pleading as well as a homestead. One's grip on an antagonist, enmeshed in a net of statutes, may be a vested right, but it is not a constitutional right. The Supreme Court went much further in United States v. Heinszel, 206 U. S. 370, and Rafferty v. Smith, 247 U. S. 226.

Nor does it make any difference that the Senate struck out the House provision for the future collection of such assessments within a year. The argument is that the tax is not uniform under section eight of Article one of the Constitution, and also apparently that it is discriminatory. As to the second, we can see no reason why Congress should not draw the line between what had been closed and what had not. If the Treasury had for four years or more failed to collect, that might be thought time enough even though the taxpayer had been the cause of the delay; there comes a time to end all things. The whole notion of a limitation involves some discrimination, which in actual incidence must appear, and indeed be, arbitrary. As for section eight [fols. 68 & 69] of Article one it has repeatedly been held to require only territorial uniformity, (The Head Money Cases, 112 U. S. 580, 595; La Belle Iron Works v. U. S., 256 U. S. 377, 392.

We have quite deliberately avoided the citation of those decisions which have hitherto dealt with these questions. Those in the district court are so many and so conflicting that it would serve no purpose merely to enumerate them. In the Circuit Courts of Appeal at present the plaintiff would win in the Fifth, (U. S. v. Burden, Smith & Co., 33 Fed. (2) 229), and lose in the Ninth, (Huntley v. Gile & Jenks, 32 Fed. (2) 857; Goodcell v. Graham & Foster, 35 Fed. (2) 586). Apparently he would also lose in the Court of Claims, though we have not been favored with the citation in an available form, (Gotham Can Co. v. U. S.). So far as the courts have gone, there is therefore a preponderance of authority in favor of the decision below.

Judgment affirmed.

[fol. 70] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 71] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 24, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is

granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response ot such writ.

Endorsed on cover: File No. 35,451. U. S. Circuit Court of Appeals, Second Circuit. Term No. 529. Laura H. Jennings, as executrix of the last will and testament of Frederic B. Jennings, deceased, petitioner, vs. Charles W. Anderson, individually and as United States Collector of Internal Revenue for the Third District of New York. Petition for a writ of certiorari and exhibit thereto. Filed October 27, 1930. File No. 35,451.